

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

ROMAN V. SELEZNEV,

Defendant.

NO. CR11-0070RAJ

**GOVERNMENT'S SUBMISSION RE:  
STATUS CONFERENCE ON  
EVIDENTIARY HEARING**

The single purpose of the evidentiary hearing in this matter is to determine whether, as defendant alleges, the government engaged in “outrageous conduct” that would justify dismissal of the Indictment. Under controlling case law, there are only two kinds of “outrageous conduct” that can support this relief: extreme torture of the defendant, and false statements made to the host country to trick it into assisting with the apprehension. Defendant does not allege that the government tortured him and does not appear to have alleged any false statements were made to Maldivian officials. Therefore, the government is asking the Court to reconsider the necessity of an evidentiary hearing or, in the alternative, limit the hearing to witnesses who can address the narrow issue of whether the U.S. agents mislead Maldivian officials.

The government is prepared to offer testimony from two witnesses with first-hand information about the government’s communications with the Maldivians: Regional

1 Security Officer (RSO) Dennis Lashinsky and Special Agent (SA) Mark Smith, both of  
 2 the Department of State. Defendant, however, has requested the presence of five  
 3 additional government witnesses, including four Secret Service agents and a Justice  
 4 Department lawyer. None of these witnesses was responsible for interacting with  
 5 Maldivian authorities, and none has anything to add on the sole material question of  
 6 whether the government lied to the Maldivians.

## 7 I. DISCUSSION

### 8 A. The Sole Material Issue is Whether the U.S. Government Lied to Maldivian 9 Authorities.

10 As discussed in detail in the parties' previous briefing, the fact that a defendant  
 11 was brought into the country by forcible abduction does not generally affect a court's  
 12 jurisdiction to try him. *Frisbie v. Collins*, 342 U.S. 519, 522 (1952). An exception to this  
 13 doctrine exists if the government engages in "shocking and outrageous" conduct. *United*  
 14 *States v. Struckman*, 611 F.3d 560 (9th Cir. 2010). Thus, defendant's motion can succeed  
 15 only if he can establish "shocking and outrageous" conduct as defined by the courts.

16 As defendant acknowledges at pages 17-20 of his brief, courts have recognized  
 17 only two types of "shocking and outrageous" conduct that will justify dismissal. The first  
 18 is where the government subjects the defendant to extreme physical torture. *United*  
 19 *States v. Toscanino*, 500 F.2d 267 (2d Cir. 1974); *see* Def's Motion at pp. 17-18. The  
 20 second (which has been discussed only in *dicta* as a conceptual possibility), is where the  
 21 government uses "blatant lies to a foreign government that induce the foreign government  
 22 to transfer the defendant to the United States." *Struckman*, 611 F.3d at 574; *see* Def's  
 23 Motion at pp. 19-20. If neither type of conduct occurred, the court's inquiry is complete  
 24 and the motion should be denied.

25 Defendant does not allege that the first type of outrageous conduct (extreme  
 26 torture) occurred in this case. His sworn declaration merely states that he was "thrown to  
 27 a couch" and that the indictment was "aggressively dangled" in front of his face. Dkt.  
 28 132-3 at ¶¶ 8-9. Thus, even under his own version of events, defendant's allegations do

1 not justify dismissal. *See, e.g., United States v. Yousef*, 2011 WL 2899244 (SDNY 2011)  
2 (“since the allegations, taken entirely at face value and in the light most favorable to the  
3 defense, reveal no conduct that shocks the conscience, there is no need for an evidentiary  
4 hearing on this motion”); *see also United States v. Al Libby*, 23 F.Supp.3d 194 (SDNY  
5 2014) (“the motion would fail as a matter of law even assuming the factual allegations  
6 rested on competent evidence”).

7 This leaves the only other type of “outrageous conduct” the Ninth Circuit has  
8 recognized as potentially supporting dismissal: false statements to the foreign  
9 government. Although defendant has not alleged any specific false statements, he has  
10 argued this principle might support his motion. Defendant’s Motion to Dismiss at 19-20.  
11 Therefore, the government is prepared to present the testimony of RSO Lashinsky and SA  
12 Smith. Because the issue of communications with the Maldivians is the only material  
13 issue even arguably in dispute, witnesses who cannot provide testimony on this issue  
14 should not be required to testify.

15 **B. RSO Lashinsky and SA Smith Are the Only Putative Witnesses With First-**  
16 **Hand Knowledge About Communications with the Maldives.**

17 ***RSO Lashinsky:*** Mr. Lashinsky was the Acting State Department RSO for the  
18 region covering the Maldives at the time of the operation. RSO Lashinsky is stationed in  
19 Sri Lanka and will travel to Seattle for the hearing. RSO Lashinsky is expected to testify  
20 that Secret Service contacted him and asked him to enlist the assistance of the Maldives  
21 in apprehending defendant. After obtaining approval from the Department of Justice and  
22 State Department officials, RSO Lashinsky contacted Commissioner Hussein Waheed of  
23 the Maldivian Police. RSO Lashinsky described the charges against defendant to  
24 Commissioner Waheed, told Commissioner Waheed that defendant would be departing  
25 the Maldives on July 5, 2014, and requested that Maldivian authorities arrest defendant at  
26 the airport and turn him over to U.S. agents. On July 3, 2014, Commissioner Waheed  
27 told RSO Lashinsky that the Maldivian president had approved the operation, and stated  
28 that the Maldivian government would give its full support to apprehending defendant.

1 RSO Lashinky assigned SA Smith to travel to the Maldives to coordinate with the  
2 Maldivian authorities and to be present at the time of the arrest. RSO Lashinky will also  
3 testify about the Diplomatic Note which was presented to the Maldivian authorities.

4 **SA Smith:** Special Agent Smith, who is now stationed in Washington, D.C., will  
5 also testify at the hearing. SA Smith will testify that he arrived in the Maldives on July  
6 4th, 2014 and met with Maldivian authorities that day to discuss the operation. The  
7 Maldivian authorities told SA Smith they were consulting with their attorney general  
8 about how to proceed and, specifically, whether to expel defendant based on the U.S.  
9 arrest warrant. SA Smith will testify that, at 4:00 p.m. local time, Maldivian authorities  
10 told him they were waiting on an arrest warrant from a Maldivian judge. However, at  
11 approximately 1:30 a.m. July 5, the Maldivian authorities contacted SA Smith and  
12 requested an Interpol Red Notice. SA Smith met with Maldivian officials again at  
13 approximately 8:30 a.m. on July 5, at which time they confirmed they would turn over  
14 Seleznev based on the Red Notice and that this decision had been made at the highest  
15 levels of their government. SA Smith was also present for defendant's apprehension.

16 **C. Defendant's Government Witnesses Would Not Provide Relevant Testimony.**

17 None of the additional witnesses that defendant is demanding would offer  
18 relevant, independent, non-cumulative testimony.

19 **Special Agents Schwandner and Iacovetti:** Defendant intends to call Secret  
20 Service SA Dan Schwandner and SAIC David Iacovetti. These agents assisted SA Smith  
21 in taking custody of defendant and transporting him to Guam. SA Schwandner and SAIC  
22 Iacovetti were *not* responsible for communications with the Maldivian authorities—as  
23 discussed above, this was the role of the Department of State. While Schwandner and  
24 SAIC Iacovetti were present for meetings between SA Smith and the Maldivian  
25 authorities, their testimony about these meetings would be cumulative.<sup>1</sup>

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27 <sup>1</sup> SAIC Iacovetti participated in surveillance of defendant upon his arrival at the Male Airport together with at least  
28 one Maldivian official. However, all operational decisions and planning were completed before he had any contact  
with Maldivian officials outside the presence of SA Smith. Similarly, SA Schwandner was waiting in the Male



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2  
3       /s/ Norman M. Barbosa  
4       NORMAN M. BARBOSA  
5       Assistant United States Attorney

6  
7       /s/ Seth Wilkinson  
8       SETH WILKINSON  
9       Assistant United States Attorney

10  
11       /s/ Ethan Arenson  
12       ETHAN ARENSEN  
13       Trial Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on April 28<sup>th</sup>, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorney of record for Defendant.

s/ Jennifer J. Witt

JENNIFER J. WITT

Legal Assistant

United States Attorney's Office

700 Stewart Street, Suite 5220

Seattle, Washington 98101-1271

Phone: 206-553-2520

Fax: 206-553-2502

E-mail: Jennifer.Witt@usdoj.gov